



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.12.2020
DELIVERED ON : 23.12.2020

CORAM

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THE HONOURABLE MR. JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.14618 of 2020

and

W.M.P. (MD)Nos.12948 and 14815 of 2020

and

CONT.P. (MD)No.1081 of 2020

W.P. (MD)No.14618 of 2020:-

J.Sikkandar : Petitioner

Vs.

- 1.The Commissioner,
Food Safety and Drugs Administration,
No.359, Anna Salai, Teynampet,
Chennai - 600 006.
- 2.The District Collector,
Collectorate, Madurai - 625 020.
- 3.The Designated Officer,
Office of the Deputy Director of Health Service,
Multipurpose Health Supervisors (F) Training School,
Viswanathapuram, Madurai - 625 014.
- 4.The Food Safety Officer,
Office of the Food Safety Officer,
Area Code:572, Madurai Corporation,
Madurai,
- 5.The Inspector of Police,
C-4, Thilagar Thidal Police Station, Madurai. : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.1003/FSSA/2020, dated 07.10.2020 issued by the respondent No.3 and quash the same as illegal and consequently, to direct the respondents to remove the lock and seal of the petitioner's lorry shed situated in No.33, Parameshwaran Pillai Lane, Madurai.

Cont. P. (MD)No.1081 of 2020:-

J.Sikkandar : Petitioner



Vs.

1.Kumar Jayant, I.A.S., Commissioner,
Food Safety and Drugs Administration,
No.359, Anna Salai, Teynampet,
Chennai - 600 006.

2.T.Anbalagan, District Collector,
Collectorate, Madurai - 625 020.

3.Dr.Somasundaram,
Designated Officer,
Office of the Deputy Director of Health Service,
Multipurpose Health Supervisors (F) Training School,
Viswanathapuram, Madurai - 625 014.

4.Raja,
Food Safety Officer,
Office of the Food Safety Officer,
Area Code:572, Madurai Corporation,
Madurai,

5.Kavitha
Inspector of Police,
C-4, Thilagar Thidal Police Station, Madurai. : Respondents

PRAYER:- Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to initiate contempt proceedings under Section 11 of the Contempt of Courts Act, 1971, against the contemnors herein for their wilful disobedience to the order passed by this Court in W.M.P.(MD)No.12948 of 2020 in W.P.(MD)No.14618 of 2020, dated 04.11.2020 and punish them accordingly.

For Petitioner	: Mr.G.Prabhu Rajudurai for Mr.S.M.A.Jinnah
For Respondents	: Mr.Sricharan Rangarajan Additional Advocate General assisted by Mrs.M.Rajeswari Government Advocate (In both petitions)

COMMON ORDER

(These petitions were heard through Video Conferencing)

The issues that arise for consideration in this Writ Petition are

(a)Whether the premises of booking office / lorry shed can be sealed under the Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act")?



(b) Whether principles of natural justice has been violated by the respondents, while passing the impugned order for sealing the premises of the petitioner under the Act?

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2. The third respondent under the impugned order, dated 07.10.2020, sealed the premises of the petitioner for the following reasons:

(a) The petitioner is a transporter of food items from one place to another place and hence, under Section 26 of the Act, he is a food business operator.

(b) The petitioner is a food business operator without licence and hence, he is liable to be punished under Section 63 of the Act.

(c) The petitioner has transported prohibited tobacco from one place to another place causing health risks and has violated Section 34(1)(ii) of the Act.

(d) In view of the violations of the Act and in public interest, the petitioner's premises is sealed under Section 36(3)(b) of the Act.

(e) Since the petitioner has violated the aforementioned statutory provisions, he is restrained from doing business.

3. Heard Mr. G. Prabhu Rajudurai, learned Counsel for Mr. S. M. A. Jinnah, learned Counsel for the petitioner, Mr. Sricharan Rangarajan, Additional Advocate General, assisted by Mrs. M. Rajeswari, learned Government Advocate for respondents.

4. The learned Counsel for the petitioner drew the attention of this Court to the impugned order, dated 07.10.2020, passed by the third respondent, and would submit that principles of natural justice has been violated by the third respondent. The learned Counsel for the petitioner would submit that the petitioner is only a road carrier and hence, he will not come within the purview of the Act, as he is not a food business operator. He also drew the attention of this Court to the definition of "food business operator", as defined under Section 3(o) of the Act and would submit that the petitioner's business does not fall within the said definition.

5. The learned Counsel for the petitioner then drew the attention of this Court to Section 63 of the Act and would submit that since the petitioner is not a food business operator, he cannot be punished under Section 63 of the Act. The learned Counsel for the petitioner then drew the attention of this Court to Section 33 of the Act and would submit that since the petitioner is not a food business operator, no prohibition order, as per Section 33 of the Act, can be passed against him.



6.The learned Counsel for the petitioner then drew the attention of this Court to Section 34 of the Act and would submit that the power to issue prohibition order is vested only with the Commissioner of Food Safety and not with the Designated Officer. According to him, since the impugned prohibition order has been passed by the Designated Officer without authority under law, the same is illegal. Further it is the contention of the learned Counsel for the petitioner that no notice was issued to the petitioner, as contemplated under Section 34(1) of the Act and hence, the impugned order is illegal. Further it is contended by the learned Counsel for the petitioner that the procedure contemplated under Section 34 of the Act has not been followed by the third respondent.

7.The learned Counsel for the petitioner then drew the attention of this Court to Section 38 of the Act and would submit that the Food Safety Officer has not followed the procedure contemplated therein before sealing the premises of the petitioner. The learned Counsel for the petitioner then drew the attention of this Court to Rule 2.1.3.(iv) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and would submit that the petitioner is a road carrier and the product seized by the third respondent does not belong to the petitioner. The learned Counsel for the petitioner would further submit that the impugned order is a non-speaking order and has violated the principles of natural justice.

8.The learned Counsel for the petitioner drew the attention of this Court to a learned Single Bench judgment of this Court, dated 17.10.2019 passed in W.P.(MD)No.21758 of 2019 in the case of **Arunachalam Vs. The District Revenue Officer and others** and would submit that the Food Safety Officer under Section 38 of the Act, is empowered only to seize the articles of food and take samples of articles and send them for lab analysis and he is not empowered to lock and seal the premises and take possession of the premises.

9.Per contra, the learned Additional Advocate General appearing for the respondents drew the attention of this Court to Section 3(j) of the Act, which defines the term "food". According to him, Gutkha, the seized product, contains tobacco and comes within the definition of "food" under the Act. In support of his submissions, he also drew this this Court to the Division Bench Judgment of this Court in the case of **J.Anbalagan vs. Union of India**, reported in **2018 SCC Online Mad 1231** and would submit that Gutkha and Panmasala being food products containing tobacco and nicotine, were banned in the State of Tamilnadu vide Notification, dated 23.05.2020 issued under Section 30 of the Act by the Commissioner of Food Safety. The learned Additional Advocate General then drew the attention of this Court to Section 3(n) of the Act, which defines "food business".



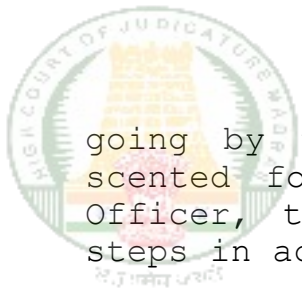
According to him, the petitioner's road carrier is involved in the business of food transport and therefore, falls within the definition of "food business" under Section 3(n) of the Act.

10. According to the learned Additional Advocate General, a food business operator in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of the Act, rules and regulations made thereunder. The learned Additional Advocate General drew the attention of this Court to the letter, dated 06.10.2020, issued by the third respondent informing the petitioner that their carrier is involved in transportation of food products, such as masal and semiya without any licence and imposed a penalty. According to him, the fact that the petitioner road carrier applied for a new licence on 08.10.2020 would make it clear that the petitioner's carrier service was operating without any licence under the Act.

11. The learned Additional Advocate General would submit that the petitioner has violated the provisions of the Act by transporting banned products. The learned Additional Advocate General then relied upon Section 26(2)(vi) of the Act and would submit that the petitioner has violated the said provisions. The learned Additional Advocate General would also submit that the petitioner has falsely alleged in his affidavit that after 03.10.2020, there was no enquiry conducted by the third respondent and order of sealing of premises came to be issued suddenly on 07.10.2020. According to him, on 06.10.2020, a notice was issued by the third respondent calling upon the petitioner to produce the details of the owner of the carrier, receipt for sending the products, details of the sender and receiver and details of the vehicle transporting the products. However, according to him, the petitioner failed to produce the said details.

12. According to the learned Additional Advocate General, the impugned order has been passed by adhering to the provisions of the Act and sufficient reasons have been given in the said order. According to the learned Additional Advocate General, the third respondent has relied upon Sections 26, 34, 36 and 63 of the Act and since the provisions of the Act have been violated by the petitioner, the third respondent has sealed his premises.

13. Further, it is submitted by the learned Additional Advocate General that under Section 36(3)(b) of the Act, it is the duty of the Designated Officer to prohibit the sale of any article of food which is in contravention of the provisions of the Act, Rules and regulations made thereunder. According to him, when the Commissioner of Food Safety, by virtue of Section 30 of the Act, prohibited the manufacture, storage, transport, distribution or sale of all food products chewable or otherwise which is either flavoured or scented or mixed with any of the said additives, and whether



going by the name or form of gutkha, pan masala, flavoured or scented food products or chewable food products, the Designated Officer, the respondent herein, was duty bound to take necessary steps in accordance with law under the Act.

14. According to the learned Additional Advocate General, the Food Officer under Rule 2.1.3(4), may seal the premises for investigation after taking a sample for food analysis, if the Food Safety Officer is of the opinion that it is not possible to comply with Section 38(1)(c) of the Act. According to him, only in accordance with Rule 2.1.3(4), the premises of the petitioner has been sealed pending investigation. According to him, the present Writ Petition has been prematurely filed, even before the completion of investigation.

15. The learned Additional Advocate General then drew the attention of this Court to Section 29(6) of the Act and would submit that the Commissioner of Food Safety and Designated Officer shall exercise the same power as are conferred on the Food Safety Officer and follow the same procedure specified in the Act and therefore, according to him, the Designated Officer is well within his jurisdiction to pass the impugned order, dated 07.10.2020.

16. The learned Additional Advocate General drew the attention of this Court to the photographs of the petitioner's place of business filed along with the typed set of documents filed by the petitioner in support of this Writ Petition and would submit that the premises sealed by the respondents is only a booking office and is not a lorry shed, as alleged by the petitioner. Further, it is his contention that the petitioner is continuing to carry on business in front of the sealed premises. According to him, the petitioner has suppressed the facts and has obtained an interim order in his favour from this Court.

17. Section 3(j) of the Act reads as follows:

"3. Definitions:

.....

(j) "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances."



18.The seized product from the petitioner's premises is gutkha, a prohibited tobacco and hence, it will not fall within the definition of "food". A Division Bench of Madras High Court in the case of **J.Anbalagan, Vs. Union of India**, reported in **2018 SCC Onl Mad 1231**, has confirms that gutkha is a prohibited tobacco. Furthermore, by notification, dated 23.05.2020 issued by the State of Tamilnadu under Section 30 of the Act, the Commissioner of Food Safety, has banned the gutkha.

19.Section 3(n) of the Act defines "food business", which reads as follows:

"3.Definitions:

.....

(n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;"

20.The petitioner is a transporter of food items and hence comes within the definition of "food business". The food business operator is defined under Section 3(o) of the Act, which reads as follows:

"3.Definitions:

.....

(o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;

21.The letter, dated 06.10.2020 issued by the third respondent informing the petitioner that they are involved in transportation of food products, such as masal and semiya without any licence, also confirms that notice was issued to the petitioner prior to the sealing of their premises. The petitioner is also applied for a licence on 08.10.2020 under the Act subsequent to the receipt of the letter, dated 06.10.2020 sent by the third respondent, which would clearly reveal that the petitioner was operating his transport business without any licence.

22.Section 26(2)(iv) of the Act prohibits a food business operator from dealing with any prohibited food products. The seized product, namely, gutkha is a prohibited item, which has seized from the premises of the petitioner and hence, under Section 26(2)(iv) of the Act, the petitioner has violated the said provisions. It is the duty of the Designated Officer to prohibit the sale of any article of food, which is in contravention of the provisions of the Act,



rules, regulations made thereunder. as per the provisions of Section 36(3) (b) of the Act. When the Commissioner of Food Safety by virtue of Section 30 of the Act prohibited the manufacture, storage, transport, distribution or sale of all food products chewable or otherwise which is either flavoured or scented or mixed with any of the said additives, and whether going by the name or form of gutkha, pan masala, flavoured or scented food products or chewable food products, the Designated Officer was duty bound to take necessary steps in accordance with law under the Act

23.The Food Safety Officer under Rule 2.1.3.(4) of the Food Safety and Standards Rules, 2011, may seal the premises for investigation after taking a sample of the food products for lab analysis, if the Food Safety Officer is of the opinion that it is not possible to comply with the Section 38(1) (0) of the Act.

24.Section 38(2) of the Act reads as follows:

38. Powers of Food Safety Officer.

.....

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis

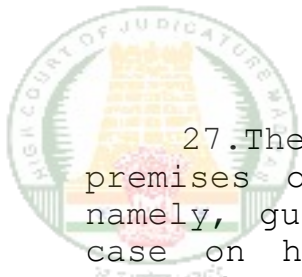
25.Therefore, Section 38(2) of the Act empowers the Food Safety Officer to enter the premises of the petitioner and seize the prohibited food products from the petitioner's premises, if found in the said premises.

26.Rule 2.1.3.(4) of the Food Safety and Standards Rules, 2011, reads as follows:

"2.1.3.Food Safety Officer:

.....

4. Powers and Duties: i. Without prejudice to the powers conferred on him under section 38 of the Act, where the Food Safety Officer is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38 (1) (c) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officer may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis."



27. Therefore, the Food Safety Officer is empowered to seal the premises of the petitioner, where, the prohibited food product, namely, gutkha, was found, for investigation. Admittedly, in the case on hand, the investigation has not been completed by the respondents and pending investigation, the premises of the petitioner has been sealed. Admittedly, the petitioner has transported the prohibited food products, namely, gutkha. A notice was also issued on 06.10.2020 by the respondents to the petitioner calling upon him to produce the details of the seller and purchaser and details of seized consignment. Without even waiting for the investigation to get completed and without cooperating with the same, the petitioner has filed this Writ Petition prematurely, in the considered view of this Court.

28. Section 29(6) of the Act reads as follows:

"29. Authorities responsible for enforcement of Act.

.....

(6) The Commissioner of Food Safety and Designated Officer shall exercise the same powers as are conferred on the Food Safety Officer and follow the same procedure specified in this Act."

29. The above provisions makes it clear that the Commissioner of Food Safety and Designated Officer shall exercise the same power, as are conferred on the Food Safety Officer and follow the same procedure specified in the Act and therefore, the Designated Officer is well within his jurisdiction to pass the impugned order, dated 07.10.2020.

30. In the affidavit filed in support of this Writ Petition, the petitioner has pleaded that his lorry shed has been sealed under the impugned order and based on the said pleadings, this Court had also granted interim stay of the impugned order by its order, dated 04.11.2020 in W.M.P.(MD)No.12948 of 2020 in W.P.(MD)No.14618 of 2020. However, as seen from the photographs filed along with this Writ Petition, the premises of the petitioner is not a lorry shed, but, it seems to be a small booking office. The petitioner can very well operate his office for the time being at another place till the investigation is completed by the respondents, as lorries cannot be parked in the petitioner's premises, as it is a small one and looks like a small office, where the petitioner has been operated. It is surprise, as to why the petitioner is hesitating to face the investigation, when they are pretty confident that they have not connected with the seller or buyer of the seized gutkha. However, this Court is not expressing any opinion as to the guilt of the petitioner with regard to his involvement in transportation of the seized gutkha. It is for the respondents to investigate the same on merits and in accordance with law as per the provisions of the Act.

31. As observed earlier, the petitioner falls within the purview of the Act and therefore, the petitioner's plea that the said Act



will not apply to them is rejected by this Court. This Court is of the considered view that the Writ Petition has been filed prematurely, as investigation by the respondents has not been completed till date. The petitioner, instead of cooperating with the investigation, has filed this Writ Petition immediately on receipt of the impugned order. However, in order to prevent injustice to any of the parties, the investigation will have to be completed by the respondents expeditiously.

32.For the foregoing reasons, this Court is of the considered view that there is no merit in this Writ Petition. However, it is made clear that the respondents shall complete the investigation and furnish a copy of the investigation report to the petitioner within a period of four weeks from the date of receipt of a copy of this order. The petitioner also shall cooperate with the respondents in the said investigation. Since the main Writ Petition is dismissed, there is no merit in the Contempt Petition filed by the petitioner.

33.With the aforesaid directions, the Writ Petition in W.P.(MD) No.14618 of 2020 and Contempt Petition in Cont.P.(MD)No.1081 of 2020, are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To

- 1.The Commissioner,
Food Safety and Drugs Administration,
No.359, Anna Salai, Teynampet,
Chennai - 600 006.
- 2.The District Collector,
Collectorate, Madurai - 625 020.
- 3.The Designated Officer,
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4.The Food Safety Officer,
Office of the Food Safety Officer,
Area Code:572, Madurai Corporation,
Madurai,

5.The Inspector of Police,
C-4, Thilagar Thidal Police Station, Madurai.

Order made in
W.P. (MD) No.14618 of 2020
and
W.M.P. (MD) Nos.12948 and 14815 of 2020
and
CONT.P. (MD) No.1081 of 2020
23.12.2020

PM(CO)
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